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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION  
14

15 **BRANDEE TRIPP,**

Petitioner,

17 v.

18 **DAWN DAVISON, Warden,**

19 Respondent.

No. C 07-05748 CW

**RESPONDENT'S REPLY TO  
PETITIONER'S OPPOSITION TO  
MOTION TO DISMISS**

20  
21 Respondent moves this Court to dismiss the Petition for Writ of Habeas Corpus on the  
22 ground that Tripp did not exhaust her state court remedies for all of her claims. Tripp's  
23 contentions in opposition are without merit, and Respondent's Motion should be granted.

24 In her California Supreme Court petition, Tripp failed to designate her claims as federal  
25 claims because nowhere in her California Supreme Court petition does she use the word  
26 "federal" (*see* Motion to Dismiss, Ex. 1), nor does she cite to the United States Constitution  
27 (Motion to Dismiss, Ex. 1, Table of Authorities). Only for her claims regarding her plea  
28 agreement, the lack of a nexus, and continued reliance on her crime does Tripp even cite to

1 federal case law. (Pet. 16, 18, 29-30, 32-40.) Thus, Tripp's claims that the Governor's decision  
 2 was based on incorrect facts and was unsupported by the evidence were not fairly presented to  
 3 the California Supreme Court as federal claims and are not exhausted. *Hiivala v. Wood*, 195  
 4 F.3d 1098, 1106-07 (9th Cir. 1999) (finding that petitioner's claim of insufficient evidence was  
 5 not exhausted because the petitioner did not refer to the Due Process Clause of the United States  
 6 Constitution and cited neither the Fourteenth Amendment nor any federal case law involving the  
 7 legal standard for a federal Constitutional violation predicated thereon).

8 Tripp's contention that she "based each claim on abundant federal authorities" is  
 9 inconsistent with the record, as stated above. Similarly, Tripp's contention that she indisputably  
 10 based her claims on "due process" is inapposite if she did not cite to the federal Constitution, a  
 11 federal case, or describe each of her claims as "federal" due process claims. *Hiivala*, 195 F.3d at  
 12 1106-07; *Shumway v. Payne*, 223 F.3d 982, 998 (9th Cir. 2002). Further, Tripp did not deny that  
 13 she failed to present to the California appellate court her claim that the Governor failed to allege  
 14 a nexus between her crime and her parole risk. Nor did she present a counter argument regarding  
 15 why this claim is therefore unexhausted. *Casey v. Moore*, 386 F.3d 896, 916-18 (9th Cir. 2004).  
 16 Thus, for the reasons stated herein and in Respondent's Motion, this Court should dismiss the  
 17 Petition.

18 Dated: April 3, 2008

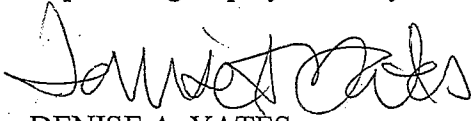
19 Respectfully submitted,

20 EDMUND G. BROWN JR.  
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 28 California Institution for Women

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In re BRANDEE TRIPP**

No.: **07-05748 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **April 3, 2008**, I served the attached

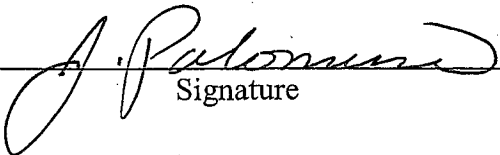
**RESPONDENT'S REPLY TO PETITIONER'S OPPOSITION TO MOTION TO  
DISMISS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Adrian T. Woodward, Esq.**  
**Law Offices of Adrian T. Woodward**  
**States Bar No. 184011**  
**4266 Atlantic Avenue**  
**Long Beach, CA 90807**  
attorney for Brandee Tripp

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 3, 2008**, at San Francisco, California.

\_\_\_\_\_  
J. Palomino  
Declarant

\_\_\_\_\_  
  
Signature